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City attorney's power discussed

Legal experts clash at council meeting

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If possible, the role of San Diego's city attorney is murkier than ever.

The latest chapter in the continuing feud between City Attorney Michael Aguirre and the City Council unfolded yesterday during an unusual, four-hour discussion with law experts about how much power the city attorney has.

One of the legal experts was retained at Deputy Mayor Toni Atkins' request. Aguirre hired the other two. The three earned from \$175 to \$450 an hour.

Atkins called the special meeting to allow city leaders to talk about the city attorney's role without the dueling memos and news conferences that have become commonplace at City Hall.

The discussion, however, was conducted without Aguirre, who chose not to attend because, he said, he "didn't want to have a confrontation today" and didn't want to distract from the information being presented.

He had Don McGrath, executive assistant city attorney, and two legal experts argue on his behalf at the meeting while he held two news briefings – one before and one during the council meeting.

The meeting did little to settle the issue over what the city attorney's role is.

Aguirre maintains that the city charter allows him to file lawsuits without council approval. Most council members say it does no such thing and that they have the ultimate authority. He should be working for them, they say.

Aguirre and several city officials have clashed since he took office in December. He has called on City Manager Lamont Ewell to resign and accused most of the council members of violating securities laws in hiding from the bond market a pension deficit now estimated at \$1.4 billion.

Aguirre has cited the city charter in filing lawsuits against city and pension system officials in his effort to root out those he believes acted illegally.

Aguirre and the council differ on three key points:

- Whether Aguirre can sue without council approval.

■Whether the council can hire outside attorneys without Aguirre's authorization.

■Whether the city attorney should take the lead in negotiations with federal agencies investigating the city's finances.

The differences are the result of varying interpretations of the city charter. Aguirre's critics and supporters alike say the charter clearly outlines what his role should be.

Atkins hired Robert Kehr, a Los Angeles lawyer, to lead yesterday's discussion.

"I cannot find any sign from the materials that I have reviewed that anyone other than the City Council . . . has the authority to run the city," said Kehr, a member of the State Bar's Commission for the Revision of the Rules of Professional Conduct.

He also cited court cases showing that in disputes between the council and city attorney, "the city attorney has no general authority to act independently of the City Council."

Aguirre's experts, however, drew different conclusions.

Richard Solomon, a full-time mediator and law professor from Santa Barbara, said the charter gives the city attorney independent authority.

"On both the criminal and civil side, the text is quite clear that the city attorney retains complete discretion to engage in litigation, to defend (the city against) litigation, to settle litigation," he said.

Only when the council must approve funds for a settlement would the city attorney need its approval, Solomon said.

Kehr, Atkins' expert, earns \$450 an hour, and he agreed to charge the city no more than \$5,000 for his services unless otherwise authorized.

Aguirre's experts, Solomon and Ellen Peck, a former trial court judge, earn \$380 and \$175 an hour, respectively. Solomon, however, said he typically charges less for public entities and would do so in this case.

The council also has spent about \$15 million on consultants who are trying to complete the city's 2003 audit.

Councilman Jim Madaffer said Aguirre is abusing the charter "to his own liking, to his own imagination, to his own whims. I think the political and media games need to stop. This continued circus atmosphere is going to do little to solve nothing."

Madaffer added that if Aguirre wants to make policy decisions, he should run for City Council or mayor.

Aguirre, who held a 1 p.m. news conference with his legal experts, held another impromptu media briefing at 4:20 p.m. – one floor above the council chambers, where the issue was still being discussed.

He said Kehr had presented "an inaccurate and false legal opinion" and that the council's efforts to usurp his powers "really backfired." Aguirre said the public would now know he has the legal authority.

Aguirre also accused Atkins of violating the state's open-meetings law by not going through the proper channels in placing the item on the agenda. Atkins said she did nothing wrong.

While the council took no action, Councilman Tony Young said the city should look at mediating the dispute. But he said he wouldn't support any additional expenditures to examine what the city charter means.

Councilwoman and mayoral candidate Donna Frye said there's a lot of anger and frustration between some council members and Aguirre, and she asked her colleagues to keep personality conflicts out of the discussion.

"We've got attorneys on both sides of the issue saying different things," she said. "The reality is much of this is political."

Afterward, Atkins said she realizes it might take a court decision to "figure out who is right and who is wrong, so we can get on with the city's business."

She emphasized that does not mean she wants to sue Aguirre.